

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Murgo	Team: Squad #4	CCRB Case #: 202107337	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/16/2021 11:34 PM	Location of Incident: Sackman Street between Belmont Avenue and Sutter Avenue	Precinct: 73	18 Mo. SOL 5/16/2023	EO SOL 5/16/2023	
Date/Time CV Reported Thu, 12/02/2021 8:07 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 12/02/2021 8:07 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Christopher Kalinowski	22920	962515	073 PCT
2. PO Jonathan Aquino	15569	957337	073 PCT
3. PO Gregory Clena	08078	964447	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Edward Whalen	30242	963328	073 PCT
2. PO Stephen Rice	02527	964238	073 PCT
3. PO Levon James	19355	968510	073 PCT
4. PO Stephen Algozzini	30691	933350	073 PCT
5. PO Trinity Fields	16249	967874	073 PCT
6. DT3 Jeffrey Goris	02829	954887	INT FIO PRG

Officer(s)	Allegation	Investigator Recommendation
A. PO Christopher Kalinowski	Abuse: Police Officer Christopher Kalinowski stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B. PO Jonathan Aquino	Abuse: Police Officer Jonathan Aquino stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C. PO Gregory Clena	Abuse: Police Officer Gregory Clena stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D. PO Christopher Kalinowski	Abuse: Police Officer Christopher Kalinowski frisked § 87(2)(b)	
E. PO Christopher Kalinowski	Abuse: Police Officer Christopher Kalinowski searched § 87(2)(b)	
F. PO Jonathan Aquino	Abuse: Police Officer Jonathan Aquino frisked § 87(2)(b)	
G. PO Jonathan Aquino	Abuse: Police Officer Jonathan Aquino frisked § 87(2)(b)	
H. PO Gregory Clena	Abuse: Police Officer Gregory Clena frisked § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I.PO Gregory Clena	Abuse: Police Officer Gregory Clena searched § 87(2)(b) [REDACTED]	[REDACTED]
J.PO Christopher Kalinowski	Abuse: Police Officer Christopher Kalinowski searched the vehicle in which § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were occupants.	[REDACTED]
K.PO Gregory Clena	Abuse: Police Officer Gregory Clena searched the vehicle in which § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were occupants.	[REDACTED]
L.PO Gregory Clena	Abuse: Police Officer Gregory Clena failed to provide § 87(2)(b) [REDACTED] with a business card.	[REDACTED]
§ 87(2)(g), § 87(4-b) [REDACTED]	§ 87(2)(g), § 87(4-b) [REDACTED]	[REDACTED]

Case Summary

On December 2, 2021, § 87(2)(b) filed this complaint with the CCRB via the call processing system.

On November 16, 2021, at approximately 11:34 PM, Police Officers Christopher Kalinowski, Jonathan Aquino, and Gregory Clena, all of the 73rd Precinct, pulled over the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants in the vicinity of Sackman Street between Belmont Avenue and Sutter Street in Brooklyn (**Allegation A: Abuse of Authority – Vehicle Stop – § 87(2)(g)** **Allegation B: Abuse of Authority – Vehicle Stop – § 87(2)(g)** **Allegation C: Abuse of Authority – Vehicle Stop – § 87(2)(g)** **Allegation D: Abuse of Authority – Frisk – § 87(2)(g)** **Allegation E: Abuse of Authority – Search – § 87(2)(g)** Police Officer Aquino frisked § 87(2)(b) and § 87(2)(b) (**Allegation F: Abuse of Authority – Frisk – § 87(2)(g)** **Allegation G: Abuse of Authority – Frisk – § 87(2)(g)** Police Officer Clena frisked and searched § 87(2)(b) (**Allegation H: Abuse of Authority – Frisk – § 87(2)(g)** **Allegation I: Abuse of Authority – Search – § 87(2)(g)** Police Officer Kalinowski and Police Officer Clena searched the vehicle (**Allegation J: Abuse of Authority – Vehicle Search – § 87(2)(g)** **Allegation K: Abuse of Authority – Vehicle Search – § 87(2)(g)** Police Officer Aquino and Police Officer Kalinowski provided business cards to the civilians, but Police Office Clena failed to provide a business card to § 87(2)(b) (**Allegation L: Abuse of Authority – Failure to Provide RTKA Card – § 87(2)(g), § 87(4-b)**

No summonses or arrests resulted from this incident.

Body-worn camera (BWC) footage from the cameras of Police Officer Aquino, Police Officer Clena, Police Officer Kalinowski, Police Officer Stephen Rice, Police Officer Edward Whalen, Police Officer Trinity Fields, and Police Officer Levon James, all of the 73rd Precinct, is linked to Board Review 01 and summarized in Board Review 02.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Christopher Kalinowski stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: Police Officer Jonathan Aquino stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (C) Abuse of Authority: Police Officer Gregory Clena stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) was interviewed by the CCRB via telephone on December 14, 2021 (Board Review 03). § 87(2)(b) was interviewed by the CCRB via telephone on January 3, 2022 (Board Review 04). § 87(2)(b) declined to provide a statement (Board Review 05). PO Clena was interviewed at the CCRB on September 13, 2022 (Board Review 06). PO Kalinowski was interviewed at the CCRB on October 19, 2022 (Board Review 07). PO Aquino was interviewed at the CCRB on October 26, 2022 (Board Review 08).

It is undisputed that PO Kalinowski, PO Aquino, and PO Clena stopped the vehicle occupied by § 87(2)(b) and § 87(2)(b) because § 87(2)(b) was not wearing his seatbelt.

New York State Vehicle and Traffic Law (VTL) §1229-C states that no person sixteen years of age or over shall be a passenger in a motor vehicle unless such person is restrained by a safety belt approved by the commissioner. It is a violation if a person is seated in a seating position equipped with both a lap safety belt and a shoulder harness belt and such person is not restrained by both such lap safety belt and shoulder harness belt (Board Review 09).

As noted above, it was undisputed that the officers stopped § 87(2)(b)'s vehicle because § 87(2)(b) did not have his seatbelt on while § 87(2)(b) was driving, in violation of New York State VTL §1229-C. § 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Christopher Kalinowski frisked § 87(2)(b).

Allegation (E) Abuse of Authority: Police Officer Christopher Kalinowski searched § 87(2)(b).

As noted above, it is undisputed that the civilians' vehicle was stopped because § 87(2)(b) was not wearing his seatbelt.

§ 87(2)(b) testified that PO Kalinowski had him get out of § 87(2)(b)'s vehicle. PO Kalinowski then patted down his waistband area and pants and entered the four pockets of his jacket and the three pockets of his sweatpants. § 87(2)(b) had his keys and asthma pump in one of the two front pockets of his jacket. He did not believe he had anything inside of his sweatpants pockets. PO Kalinowski did not retrieve anything from § 87(2)(b)'s person.

§ 87(2)(b) testified that PO Kalinowski patted down § 87(2)(b)'s legs and waist area. § 87(2)(b) did not see PO Kalinowski enter any of § 87(2)(b)'s pockets.

PO Kalinowski testified that he only recalled that he was "involved in a car stop." He did not recall additional details outside of what he observed from reviewing his BWC footage. He testified initially that he frisked § 87(2)(b) for weapons, as well as for his own safety, the safety of his partners, and the safety of the other occupants of the vehicle. He did not recall any other reason why he frisked § 87(2)(b). He frisked the area of § 87(2)(b)'s pants pockets and waist and remained over § 87(2)(b)'s clothing. He did not remember if he felt anything during the frisk. He did not recall whether he entered any of § 87(2)(b)'s pockets. He did not recall whether he made any observations about § 87(2)(b)'s person prior to frisking him. PO Kalinowski later testified that he did not remember if he believed that § 87(2)(b) might have had a weapon. The occupants were "dipping" and moving around "low," miming leaning forward and reaching his arms down in front of him. He could not see through the door panels. He did not recall where he was when the dipping motion occurred or which of the car's occupants were doing the dipping motion. When asked what he thought the civilians were doing when he saw them dipping, he stated that he could not speculate. PO Kalinowski did not remember whether the dipping was related to his frisking of § 87(2)(b). When asked whether the dipping led him to believe that there might be a weapon in the car, PO Kalinowski stated that he did not remember the incident. Based on his training and experience, PO Kalinowski testified that he would frisk someone involved in a car stop "for safety...or if you believe that they're armed."

In PO Kalinowski's BWC footage (Board Review 10), at the 1:55 timestamp, PO Kalinowski asks § 87(2)(b) for his ID, and § 87(2)(b) asks why. PO Kalinowski tells § 87(2)(b) that he does not have his seatbelt on and that he saw that he did not take it off when officers stopped them. At the

7:45 timestamp, PO Kalinowski asks § 87(2)(b) to step out of the car and keep his hands up. At 7:50, as § 87(2)(b) is standing up out of the car, PO Kalinowski asks § 87(2)(b) if he has anything on him that will “poke” or “stab” him, and § 87(2)(b) says that he has nothing. There are sounds of fabric on fabric, but it is unclear what is happening at this point, as the camera is too close to § 87(2)(b)s body. At 7:55, PO Kalinowski asks § 87(2)(b) to turn and put his hands on top of the car. PO Kalinowski pats down § 87(2)(b)s torso, waist, and legs. PO Kalinowski does not enter any of § 87(2)(b)s pockets after the captured frisk. It is unclear if he entered his pockets between timestamps 7:50-7:55 in the video.

BWC footage captured by PO Whalen’s camera (Board Review 11) shows, at timestamp 2:30, PO Kalinowski beginning to frisk § 87(2)(b) around his waist. PO Kalinowski’s body mostly blocks § 87(2)(b)s body at this point, and PO Kalinowski’s hands are not clearly visible. At timestamp 2:37, PO Kalinowski’s hands are more visible as they pat § 87(2)(b) down around his waist and squeeze his jacket and pants pockets. PO Kalinowski is not captured in these moments entering any of § 87(2)(b)s pockets; it appears that he does not enter them in these moments, though it is unclear whether he entered any pockets during the time his body blocked § 87(2)(b)s.

People v. DeBour, 40 N.Y.2d 210 (1976), outlines that, in order to frisk a person, the officer must reasonably suspect that the person is armed (Board Review 13).

Arizona v. Johnson, 555 U.S. 323 (2009), states that to justify a patdown of the driver or a passenger during a traffic stop, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous (Board Review 17).

Patrol Guide Procedure 212-11 states that a search is when an officer places their hands inside a pocket or other interior portions of a person’s clothing or personal property. A search requires that officers have probable cause to believe that the person is in possession of contraband. A search after a frisk can be conducted to remove an object that the officer felt during a frisk and reasonably suspects is a weapon or dangerous instrument (Board Review 15).

Based on a preponderance of the evidence, the investigation determined that PO Kalinowski frisked § 87(2)(b). PO Kalinowski was unable to provide an account of the incident or a justification for his actions except to say that the occupants of the car (he could not recall which) were “dipping” within the car. BWC footage suggests no other apparent justification for the frisk, particularly as the footage only confirms that the only apparent reason for the initial stop of the vehicle was for a passenger or passengers not wearing a seatbelt. § 87(2)(g)

Given that there are approximately five seconds when § 87(2)(b) is standing out of the car and PO Kalinowski’s hands are not visible, the investigation determined, based on a preponderance of the evidence, that PO Kalinowski would not have had time at this point to enter the seven pockets that § 87(2)(b) alleged he had entered. After the captured frisk, PO Kalinowski does not appear to enter any of § 87(2)(b)s pockets. § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Jonathan Aquino frisked § 87(2)(b)

It is undisputed that PO Aquino frisked § 87(2)(b)

§ 87(2)(b) testified that immediately after he provided PO Aquino with his license and registration information, PO Aquino ordered him to get out of the car. PO Aquino patted down § 87(2)(b)s

legs and waist area. § 87(2)(b) was wearing blue track pants with two pockets in the front and one in the back and a blue Puma jacket with two external pockets, one internal pocket, and one pocket on its sleeve. § 87(2)(b) carried his wallet in his back pants pocket and his keys in his front right pants pocket. PO Aquino did not retrieve anything from § 87(2)(b)'s person.

PO Aquino testified that while § 87(2)(b) was still in the car, he did not make any observations about § 87(2)(b)'s person that seemed significant. The only observation that PO Aquino mentioned was § 87(2)(b)'s hesitance to get out of the car, which made PO Aquino “feel some type of way” and think that § 87(2)(b) may not have wanted him to find something in the car. § 87(2)(b) mentioned that they were coming back from a recording studio for a music video. In PO Aquino's prior experience, when people say that they were just at a recording studio or that there was a music video being recorded, most videos will generally either have real weapons or imitation weapons. Therefore, PO Aquino did not feel comfortable removing § 87(2)(b) from the vehicle and asking him to step outside “without doing a very...preliminary frisk” to make sure that he did not feel “any weapons or anything like that.” When PO Aquino heard PO Clena request additional units, he knew that the civilians were going to have to step out of their vehicle so that they could be frisked, and the car could be searched. There was no other reason why the civilians were made to exit the car. PO Aquino had no reason to believe that § 87(2)(b) was concealing a weapon by the way he was acting. PO Aquino did not observe anything else about his person that led him to believe that § 87(2)(b) might have had a weapon on him. Aside from the movements of the rear passenger, and the rear passenger seeming nervous, there were no other concrete factors that led PO Aquino to frisk § 87(2)(b). Prior to asking § 87(2)(b) to step out of the vehicle, PO Aquino did not believe that § 87(2)(b) had committed a crime, or was in the process of committing a crime, or was about to commit a crime. PO Aquino “still frisked him anyway” for the safety of the officers and to “just to make sure there was no knives or anything like that.” He did not specifically believe that § 87(2)(b) had a knife. He did not think that § 87(2)(b) had anything in any particular area on his body and patted § 87(2)(b)'s sweater pockets, pants pockets, and legs outside of his clothes. Nothing was recovered from § 87(2)(b). PO Aquino added that if an officer believes that one individual might have a concealed weapon, it is best to check all the individuals involved.

PO Aquino's BWC footage (Board Review 12) shows § 87(2)(b) telling PO Aquino that they were at the studio at timestamp 1:52. At timestamp 3:21, PO Aquino asks if they recorded anything in the studio, and § 87(2)(b) says that they did not, as someone else was recording. At timestamp 6:16, PO Aquino asks § 87(2)(b) to step out of the car, and § 87(2)(b) asks several times why. PO Aquino continues asking him to step out. § 87(2)(b) exits the car at the 7:24 timestamp. PO Aquino asks § 87(2)(b) to step towards him, then asks § 87(2)(b) if he has anything “sharp” on him that will poke him. § 87(2)(b) says no, and PO Aquino pats him down in the waist area, pants, and crotch area, and then tells him to walk to the back. At timestamp 8:09, PO Aquino tells § 87(2)(b) “The only reason we are pulling you out, the man in the back is moving a little funny...It looks like he might be concealing something.” The audio is not entirely clear, as many people speak, but PO Aquino appears to tell § 87(2)(b) that they “just want to make sure” that there is not something that is “not supposed to be there.” PO Aquino then explains that if “something is there, we pull him out” for “everybody's safety.”

Arizona v. Johnson, 555 U.S. 323 (2009) states that to justify a patdown of the driver or a passenger during a traffic stop, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous (Board Review 17).

By his own account, PO Aquino did not observe anything about § 87(2)(b)'s person or behavior that led PO Aquino to believe that § 87(2)(b) was armed or concealing something on his person. PO Aquino's primary reasons for frisking § 87(2)(b) were § 87(2)(b)'s comments about coming

from a recording studio and the movements of § 87(2)(b) seated in the back seat. PO Aquino did not believe that § 87(2)(b) had committed a crime, was in the process of committing a crime, or was about to commit a crime. This, coupled with PO Aquino's testimony that he did not believe § 87(2)(b) to have a specific weapon or to have anything secreted in a particular area, and PO Aquino's statements that he "frisked him anyway...just to make sure..." and that he and his partners check all individuals involved if they believe that one individual might have a concealed weapon § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Jonathan Aquino frisked § 87(2)(b)

§ 87(2)(b) believed that after patting him down, PO Aquino patted down § 87(2)(b)'s legs and waist area. § 87(2)(b) did not see PO Aquino enter any of § 87(2)(b)'s pockets.

It is otherwise undisputed that PO Aquino did not frisk § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

Allegation (H) Abuse of Authority: Police Officer Gregory Clena frisked § 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer Gregory Clena searched § 87(2)(b)

It is undisputed that PO Clena frisked and searched § 87(2)(b)

§ 87(2)(b) testified that PO Clena searched § 87(2)(b) though he could not see PO Clena's hands or the "full details" of the search.

PO Clena testified that as he approached the car, he observed the occupants moving around, turning to each other, and reaching as if they were passing something to each other. He saw an occupant or occupants' head turn, hands going up, and the rear passenger § 87(2)(b) abruptly put his arm down. He did not know where § 87(2)(b)'s hands were before § 87(2)(b) put his hands down and was not able to see anything in § 87(2)(b)'s hands or in anyone else's hands. PO Clena did not see any objects being passed but believed that someone might have passed § 87(2)(b) a weapon. When the officers reached the car, the civilians were very "still," and it seemed "like something was not right." When § 87(2)(b) seemed to put something down, PO Clena believed that he might have "secreted something," possibly either a weapon or contraband. The way § 87(2)(b) was sitting down also "seemed like he was concealing something," though PO Clena did not know how to articulate this belief. § 87(2)(b) seemed to have his right hand at his right side as if he did not want PO Clena to see something. PO Clena believed that § 87(2)(b) might be armed and dangerous because of § 87(2)(b)'s "movements and the way he was acting." When PO Clena was at the rear passenger window, there was nothing else that he observed within the car that led him to believe that there was contraband in the vehicle. Aside from the seatbelts, there was nothing else that he observed about the vehicle or its occupants that seemed to be a violation, and when PO Clena looked § 87(2)(b) up, § 87(2)(b) had no warrants or I-cards. § 87(2)(b) was never considered under arrest. PO Clena frisked § 87(2)(b) only to ensure that § 87(2)(b) did not have a weapon due to § 87(2)(b)'s movements as the officers were approaching the car. PO Clena did not know for sure whether he believed that § 87(2)(b) had a weapon. He did not have an expectation about where on § 87(2)(b)'s body he might have had a weapon. PO Clena checked § 87(2)(b)'s "whole body," as he did not know exactly where § 87(2)(b) would conceal a

weapon. § 87(2)(b) had a bulge in an inside jacket pocket that PO Clena frisked. § 87(2)(b) “had bulges all over his pants” and large pockets. PO Clena believed that all of § 87(2)(b)’s pockets had “stuff” in them. He thought that the items in the pockets could have been contraband. PO Clena did not recall what the bulges looked like, but based on the appearance of the bulges, PO Clena believed that § 87(2)(b) had a weapon in a place or places where the bulges were. He did not know what kind of a weapon he thought § 87(2)(b) had and thought that the weapon could have been a gun, a knife, a taser, or “any kind of weapon.” PO Clena did not feel any kind of weapon on § 87(2)(b). PO Clena did not recall putting his hands into any of § 87(2)(b)’s pockets. When shown a portion of PO Aquino’s BWC footage (Board Review 12, discussed below) that shows him placing his fingers into § 87(2)(b)’s pocket, PO Clena stated that he did not recall this happening and did not recall why he placed his fingers in § 87(2)(b)’s pocket. PO Clena did not recover or retrieve anything from § 87(2)(b).

PO Aquino testified that as the officers were approaching the vehicle, he observed § 87(2)(b) move around “a little too much” for someone who was just pulled over, particularly as he was in the back seat. § 87(2)(b) made “abrupt” movements, and PO Aquino felt that there was no reason to be moving around as he was unless § 87(2)(b) was moving something around or readjusting himself. PO Aquino saw § 87(2)(b) through the back of the vehicle and saw his head and the top couple of inches of his shoulders. He could not see § 87(2)(b)’s hands or see whether § 87(2)(b) was doing something with his hands. He did not recall seeing § 87(2)(b) move towards any specific areas within the car. He did not observe the other two occupants of the car moving as he was approaching the car. When PO Aquino was approximately one foot from § 87(2)(b)’s door, § 87(2)(b) tried to open the door to exit the vehicle. PO Aquino instructed him to stay in the vehicle, and § 87(2)(b) closed the door. Once at the car, PO Aquino observed that § 87(2)(b) had a fanny pack on him that he was trying to cover with his jacket to obstruct the officers’ view of it. § 87(2)(b)’s attempt to get out of the car, his movements as officers approached the car, and his nervousness and the fact that he refrained from making conversation with the officers “kind of seemed odd, or just out of the ordinary....”

PO Clena’s BWC footage (Board Review 18) at timestamp 8:03 shows PO Clena telling § 87(2)(b) to step out of the car, keeping his hands up and not touching anything. § 87(2)(b) hands PO Clena a bag from his lap, which PO Clena places on the roof of the car. PO Clena frisks § 87(2)(b) beginning at timestamp 8:10. § 87(2)(b) says that he only has marijuana on him, and PO Clena asks him if he has anything sharp. PO Clena pats the interior part of § 87(2)(b)’s jacket, his upper and lower chest area, and his legs. At timestamp 8:52, PO Clena appears to place his hand in § 87(2)(b)’s right side pants pocket, and then pat down his groin area and jacket. At timestamp 9:06, PO Clena lifts the back of § 87(2)(b)’s jacket as § 87(2)(b) stands at the rear of the vehicle with § 87(2)(b) and § 87(2)(b). At 9:15, PO Clena takes § 87(2)(b)’s bag from the car’s roof and appears to open it at the bottom of the frame, just out of view of the camera, based on the visible portion of the bag and the sound of the zipper. At timestamp 9:25, PO Clena zippers the bag closed and seems to place it on the rear seat.

PO Aquino’s BWC footage (Board Review 12) shows PO Clena pat down § 87(2)(b)’s shirt, jacket, and pants at timestamp 8:12. At timestamp 8:53, PO Clena puts his right fingers in § 87(2)(b)’s left front pants pocket. PO Clena then continues patting down § 87(2)(b)’s clothing, particularly his legs/pants. PO Aquino’s camera does not capture PO Clena searching § 87(2)(b)’s bag, as § 87(2)(b)’s body blocks PO Clena from view at this time.

Arizona v. Johnson, 555 U.S. 323 (2009) states that to justify a patdown of the driver or a passenger during a traffic stop, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous (Board Review 17).

People v. Howard, 147 A.D.2d 177 (1989) notes that the observation of an unidentifiable bulge in a person's pocket is insufficient as a basis for a frisk or search for a gun (Board Review 14).

Patrol Guide Procedure 212-11 states that a police officer cannot "frisk" a bag or item of personal property unless the officer has a reasonable suspicion that the person is armed and dangerous and the bag or item could contain a weapon and is within the person's reach (Board Review 15).

As noted above, in order for an officer to frisk someone during a traffic stop, the officer must have reasonable suspicion that the person to be frisked is armed or poses a threat to safety. Per his own testimony, PO Clena did not know for sure whether he believed that § 87(2)(b) had a weapon and could not articulate why he believed that the way § 87(2)(b) was sitting seemed like he was concealing something. PO Clena had no specific beliefs about what kind of weapon there may have been or where it may have been on § 87(2)(b)'s person. PO Clena was unable to describe the bulges on § 87(2)(b)'s person or articulate what kind of weapon any of the bulges appeared to be.

§ 87(2)(g)

§ 87(2)(g)

Additionally, PO Clena was unable to provide a reason why he put his fingers into § 87(2)(b)'s pockets. Furthermore, as shown in PO Clena's BWC footage, § 87(2)(b) was not in possession of his bag when PO Clena searched it, as required by the Patrol Guide. § 87(2)(g)

Allegation (J) Abuse of Authority: Police Officer Christopher Kalinowski searched the vehicle in which § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (K) Abuse of Authority: Police Officer Gregory Clena searched the vehicle in which § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that PO Kalinowski and PO Clena searched the vehicle within which § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants without asking for or obtaining consent to do so.

§ 87(2)(b) testified that he saw PO Kalinowski inside § 87(2)(b)'s car with a flashlight in his hand, looking at the car's middle console. PO Kalinowski did not ask for permission. PO Kalinowski was the only officer § 87(2)(b) saw in the car, and he only saw him look at the middle console, though he "could definitely hear movements." § 87(2)(b) was standing at the rear of § 87(2)(b)'s car at the time and did not want to keep turning around. The car search lasted a few minutes.

§ 87(2)(b) believed that three different officers searched his car. These officers did not ask for permission and never provided § 87(2)(b) with a reason why they searched the car. The officers searched the front driver's seat, the front passenger seat, and both seats in the back. The officers did not search the car's trunk. The officers did not retrieve any items from the car during the search, which § 87(2)(b) estimated lasted approximately five to ten minutes.

As noted above, PO Kalinowski testified that he did not recall the incident. He mentioned civilians making a "dipping" motion within the car that was "around their person," but could not provide details on where he was when he observed this, which civilians were "dipping," what parts of the civilians' bodies he could see (including whether he could see their hands or arms), or what he thought the civilians were doing. When asked whether the dipping motion led him to believe that there might be a weapon in the car, PO Kalinowski reiterated that he did not remember the incident.

He did not have a memory of why he searched the vehicle and did not recall whether he believed that there was some kind of contraband, either weapons or drugs, in the vehicle. He did not recall whether he believed that any of the occupants of the car were armed at any point.

PO Clena testified that as he approached the car, he observed the occupants moving around, turning to each other, and reaching to each other as if they were passing something to each other. He saw an occupant or occupants' head turn, hands going up, and the rear passenger § 87(2)(b) abruptly put his arm down. He did not know where § 87(2)(b)'s hands were before § 87(2)(b) put his hands down and was not able to see anything in § 87(2)(b)'s hands or in anyone else's hands. PO Clena did not see any objects being passed. When the officers reached the car, the civilians were very "still," and it seemed "like something was not right." PO Clena searched the "reachable area" of the front and back seat of the vehicle in which he felt that § 87(2)(b) or the other occupants of the vehicle might have secreted a weapon, including the front driver's side and rear driver's side. Other than the movements of the occupants of the vehicle, there was no other reason that PO Clena believed that there was a weapon in the car. PO Clena was not searching for anything in the car besides a weapon. He did not know why PO Kalinowski searched the car. PO Clena believed that he found a bag of marijuana and that nothing was retrieved from the vehicle.

PO Aquino was not sure why PO Kalinowski and PO Clena searched the vehicle and was not part of the decision-making to search the vehicle.

PO Kalinowski's BWC footage (Board Review 10) captures his search of the vehicle, beginning at timestamp 9:10. PO Kalinowski searches the front and rear of the passenger's side of the car, including opening the middle console and searching a backpack and a smaller bag.

PO Clena's BWC footage (Board Review 18) captures what appears to be his search of § 87(2)(b)'s small bag at timestamp 9:15. At timestamp 9:30, PO Clena begins searching the car itself. Though his hands are not always visible, it appears that he searches through the door's compartments and checks the driver's footwell, the area around the driver's seat, a cupholder or other compartment, and the backseat of the driver's side of the car.

People v. Hernandez, 238 A.D.2d 131 (1997) states that there must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of the vehicle (Board Review 19).

People v. Newman, 96 A.D.3d 34 (2012) states that if officers have ample reason to believe that there is a substantial likelihood that there is a weapon under the seat that poses a specific danger to their safety, then they are only justified in conducting a limited search where they observed the defendant reaching (Board Review 20).

PO Clena was the only officer to offer a reason for the search of the vehicle conducted by himself and PO Kalinowski. He did not identify a specific area that the occupants of the vehicle were reaching towards, § 87(2)(g) and ultimately searched the bulk of the driver's side of the car, as evidenced by his own BWC footage. PO Clena also testified that other than the movements of the occupants in the vehicle, there was no other reason that he believed there to be a weapon in the car. § 87(2)(g)

§ 87(2)(g)

Allegation (L) Abuse of Authority: Police Officer Gregory Clena failed to provide § 87(2)(b) with a business card.

It is undisputed that PO Clena did not provide a business card to § 87(2)(b) despite frisking and searching him. PO Clena's interaction with § 87(2)(b) did not result in a summons or an arrest. PO Aquino and PO Kalinowski each provided a business card to the civilian they frisked.

PO Clena stated that at the end of their interactions, the officers usually offer business cards. Often, only one officer offers, as the officers all have body-worn cameras and work as a team, so if a person finds one of the officers, they can find all of the officers in the car. PO Clena did not give a business card because often, when an officer tries to give a business card to other people, the people will say that they have the partner's business card.

New York City Administrative Code 14-174 requires officers to offer a business card to the subject of the police action if the stop, frisk, and search do not result in an arrest or summons (Board Review 21).

Patrol Guide Procedure 212-11 also instructs officers to offer an RTKA business card after conducting a level 3 stop (Board Review 15).

As noted above, the investigation determined that PO Clena frisked and searched § 87(2)(b) and that he did not provide § 87(2)(b) with a business card following the encounter despite being required to do so. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 24).
- § 87(2)(b)

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 26).
- PO Kalinowski has been a member of service for six years and has been a subject in five additional CCRB complaints and 11 additional allegations, of which five were substantiated.

- § 87(2)(g)
- 202001034 involved a substantiated allegation of discourteous language. The Board

○ § 87(2)(g)

- PO Aquino has been a member of service for seven years and has been a subject in seven additional cases and 12 additional allegations, none of which were substantiated. § 87(2)(g)
- PO Clena has been a member of service for five years and has been a subject in one additional CCRB complaint and one additional allegation, with no current substantiations. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- Due to an Agency moratorium on Mediations, this case could not be mediated.
- As of January 30, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (Board Review 27).

• § 87(2)(b)

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Squad: 4

Investigator:	<u>Rachel Murgu</u>	<u>SI Rachel Murgu</u>	<u>02/16/2023</u>
	Signature	Print Title & Name	Date

Squad Leader: Raquel Velasquez IM Raquel Velasquez 02/24/2023
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____